HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 106 / 06 (S/S)

Munni Devi

Vs

State of Uttaranchal and others

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 13.02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT

NAINITAL

WRIT PETITION NO. 106 (SS) OF 2006

Munni Devi, W/o late Bhupal Singh,
R/o Village Riya Post Office Patkot,
Gram Sabha Amtoli, District Nainital. .....Petitioner.

Versus

1. State of Uttaranchal, through Executive Engineer Tarai Irrigation Division, Nainital.
2. Executive Engineer, Tarai Irrigation Division, Nainital.
3. Assistant Engineer, Irrigation Division, Nainital.

.....Respondents.

13.02.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Gopal Narain, learned counsel for the petitioner and learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing and commanding the respondents to appoint the petitioner on a suitable post on compassionate ground under dying in harness rules.

The short grievance of the petitioner is that after the death of her husband Sri Bhupal Singh on 9th/10th June, 1997, she moved an application for appointment under Dying in Harness Rules and the same has not yet been disposed of.

The case of the petitioner is that the husband of the petitioner was Beldar and was employed on 1st September, 1979 under the Executive Engineer, Tarai Irrigation Division, Nainital and unfortunately on 9/10th June, 1997, the husband of the petitioner died.

After the death of her husband, the petitioner has been running from pillar to post although she has been paid the gratuity amount but the same is not sufficient to meet out the family circumstances.

In ***Writ petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others***, similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as *under:-*

"For the reasons recorded above, since the petitioners' husband was continuing in employment for more that 16 years, petitioner is entitled 5to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order."

So far as the appointment under Dying in Harness is concerned, the Apex Court in the case of ***Umesh kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family

will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

Therefore, as will appear for the aforesaid judgment that the object of the grant of compassionate appointment is to enable the family to tide over the sudden crisis. The object is to help the deceased family from starvation and not to make a selection. In the same judgment it has also been observed as under:-

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

So far as the judgment of the Apex Court in the case of **Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468** is concerned, the relevant observations are quoted below:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The propose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post

for appointment supernumerary post should be created to accommodate the applicant."

In ***Writ petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others,*** similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as under:-

"For the reasons recorded above, since the petitioners' husband was continuing in employment for more that 16 years, petitioner is entitled to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order."

In view of the above, the respondents are directed to pass appropriate orders on the application of the petitioner dated 19th March, 2001 (Annexure 2) as well as application dated 27th July, 2005 in the light of the observations made above.

Respondents are directed to dispose of the representation filed by the petitioner within a period of six weeks.

The writ petition is disposed of finally. No order as to costs.

(Rajesh Tandon, J.)

13.02.2006
Rathour